

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

CRIMINAL APPEAL NO. 49/2020

Shri Bhaskar Aatmaram Ghugre,
aged about 32 years, Occ. Business,
R/o. Khopdi, Tah. Barshitakli, Dist. Akola,
presently at Mauli Nagar, Lakhala, Washim,
Tah. & Dist. Washim.

.... APPELLANT

// VERSUS //

1. State of Maharashtra,
through P. S.O. Washim (Rural),
Tah. & Dist. Washim.
2. Sau. Sulbha Rajendra Sawant,
aged about 30 years, Occ. Labour,
R/o. Adoli, Tah. & Dist. Washim.

.... RESPONDENTS

Shri P. M. Pande, Advocate for appellant.
Shri S. D. Shirpurkar, A. P. P. for respondent No. 1/State.

CORAM : VINAY JOSHI, J.
DATED : 10.12.2020

JUDGMENT

Heard.

2. **Admit.** Considering the issue involved in the matter and by consent of the learned counsel present for the parties, appeal is taken up for final disposal.

3. This is an appeal under Section 14(A) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short 'SC and ST Act') challenging the order of rejection of pre-arrest bail by the Additional Sessions Judge, Washim vide its order dated 18.11.2019. Crime was registered at Police Station, Washim (Rural) vide Crime No. 269/2019 against the appellant/accused for the offence punishable under Sections 354, 452, 506 of the Indian Penal Code and Section 8 of the Protection of Children from Sexual Offences Act, 2012 (POCSO) and Section 3(1)(w)(i)(ii), 3(2) (v-a) of Atrocity Act. The appellant initially approached for pre-arrest bail to the Court of Sessions, however he could not succeed.

4. At the instance of report dated 23.10.2019 lodged by mother of victim, the offence was registered. The informant – mother stated that the accused who is Doctor, was in visiting term at their village, was providing medicines. On the day of incident i.e. on 21.10.2019, when the informant lady and her husband were away from of their house, accused arrived. At that time, the accused under

the pretext of checking temperature of victim girl aged 11 years, removed her pant and made her to sleep on the cot and slept on her person. The accused kissed her and touched her chest by mouth and asked minor to touch his penis. These things were narrated by victim weepingly to her mother at 04.30 p.m. on the same day. After learning the things, mother telephonically called her husband who returned on the following day. According to victim, thereafter they took information regarding the full name of accused and then lodged report on 23.10.2019.

5. While claiming bail, learned counsel for the appellant made three fold submission namely, there is inordinate delay in lodgment of First Information Report, the Police report dose not disclose that because of the victim belongs to scheduled caste, the offence has been committed and lastly because of village rivalry , false report has been lodged. The State resisted the appeal vide reply-affidavit. Learned Additional Public Prosecutor stressed on the point that despite carrying prestigious profession of Doctor, accused has sexually abused the minor girl aged 11 years. According to him, the time gap of two days has been properly explained by the informant in the complaint itself. Moreover, considering the seriousness of the

offence, he urged for rejection.

6. As per First Information Report, when the parents were away, the accused entered into the house of victim and made sexual assault on minor vulnerable girl aged 11 years. It is a case of outraging modesty of woman and sexual assault within the meaning of Section 7 of the POCSO Act.

7. As per informant, after learning the things, she called her husband and informed about the happening on the following day. Thereafter, on the very next day, the First Information Report has been lodged. Prima-facie, the First Information Report bears a plausible explanation about the delay. Besides, the offence punishable under the provisions of the SC and ST Act, the act of accused involves an offence of “sexual assault” which attracts punishment upto five years of imprisonment. The informant – lady has specifically narrated entire incident which she learnt from minor girl. The very act of accused, entering into the house of victim and by taking advantage of his position, sexually abused her is quite serious. In the circumstances, custodial interrogation is needed to facilitate proper investigation.

8. I do not find any irregularity or illegality committed by the Trial Court while rejecting application. The appeal carries no merit, stands dismissed.

JUDGE

Gohane.